



Netsafe submission to Independent Electoral Review

1. This submission seeks to address the question about what, if anything, should be done to reduce the risk of disinformation and misinformation influencing New Zealand's elections.

About Netsafe

2. Netsafe is an independent non-profit organisation of nearly 25 years' standing that has the promotion of online safety at its core. Netsafe has been the Approved Agency under the Harmful Digital Communications Act 2015 (HDC Act) since 2016. Netsafe's functions under the HDC Act are amongst others to:

- a. to receive and assess complaints about harm caused to individuals by digital communications
- b. to investigate complaints
- c. to use advice, negotiation, mediation, and persuasion (as appropriate) to resolve complaints
- d. to establish and maintain relationships with domestic and foreign service providers, online content hosts, and agencies (as appropriate) to achieve the purpose of the Act, which is to deter, prevent, and mitigate harm caused to individuals by digital communications, and provide victims of harmful digital communications with a quick and efficient means of redress.

3. Netsafe receives all manner of complaints about online activity and is increasingly receiving complaints about mis and disinformation. While Netsafe's powers and functions are limited under the HDC Act - we have no formal investigative or enforcement powers - we nevertheless seek to resolve as many complaints as possible. It is likely that the closer we come to an election, Netsafe will receive more complaints about mis and disinformation. Whether or not a complaint is about mis or disinformation in particular, given the greater scope for online debate expressing contrary views during an election, some of which may become heated and descend into personal attacks, Netsafe is likely to be asked to try to resolve a number of complaints that allege a breach of one or more of the communication principles set out in s6 of the HDC Act.

Balancing rights to freedom of expression etc

4. A key concern in any debate on addressing mis and disinformation is the need to safeguard and balance competing rights to freedom of expression (which includes the right to both impart and received information) protected by the New Zealand Bill of Rights Act 1990 (NZBORA).² One person's criticism of political party policy proposals during an election may be another person's so called fake news or disinformation. Taking the wrong approach risks stifling legitimate debate, dissent or contrary views. It is vitally important therefore that any proposals are consistent with the rights and freedoms set out in the NZBORA.

Defining misinformation and disinformation

5. We note that there is no formal statutory definition of misinformation or disinformation in New Zealand law, let alone in the context of elections. Terms such as "fake news" which may be used to shut down or discredit legitimate debate are also bandied about, especially during elections. While there are working definitions used in the context of academic writing and research or e.g. voluntary Codes of Practice, both here and overseas, including the Aotearoa New Zealand Code of Practice for Online Safety and Harms,³ there is no common publicly and easily understood definition of these terms. Before it is possible to start to address issues raised by mis and disinformation (and indeed "fake news") in society more generally, we think it is necessary to have a clear, accessible, common and formal understanding as to what these terms mean.

Comparative analysis

6. Significant work and research on this topic has already been undertaken and there is much to learn from other jurisdictions, think tanks and institutions.⁴ For example, the OECD has prepared reports on governance responses to disinformation⁵ and building trust in public institutions,⁶ the European Commission has significant resources on the issue,⁷ the UK Government Communication Service has developed tools to help recognise and address mis and disinformation in public communications,⁸ Fujo, the institute for future media and journalism based in Ireland has prepared reports on online political advertising during elections,⁹ the Australian Communications and Media Authority oversees the voluntary Australian Code of Practice for Disinformation and Misinformation developed by the Digital Industry Group Inc,¹⁰ and New Zealand has its own voluntary industry code: the Aotearoa New Zealand Code of Practice for Online Safety and Harms.¹¹ While there are many common issues and potential approaches we can learn and draw from without reinventing the wheel, it will of course be important to ensure an Aotearoa New Zealand specific solution which takes account of our history, specific constitutional make up, including te Tiriti, and contemporary society. It is also clear that we need to approach this as a whole of society issue, rather than laying responsibility at the door of a single actor or sector e.g. only online content hosts or only the Electoral Commission.

Education

7. A common theme in many of the approaches mentioned above is to ensure better education for both public and private actors and both children and adults to help identify mis and disinformation, including media and digital literacy training and critical thinking and source checking. Equipping everyone with the tools to help them critically analyse information whether in the form of traditional media or online sources /social media might go some way towards addressing some of the issues. Finland for example starts early in educating its primary aged children on media literacy¹² and is, as a result, ranked as having “the highest potential to withstand the negative impact of fake news and misinformation,” according to the 2021 Media Literacy Index.¹³

Independence

8. Given the likely levels of distrust and cynicism and, in particular, to address concerns about freedom of expression, leadership and guidance on this issue, especially during an election, ought to come from a source independent of government and political parties. The Electoral Commission is likely to be best placed to run any information and education campaign during an election period. But civil society, academia and private actors also have a role to play. As above this needs to be addressed as a whole of society issue with no one actor or agency having sole responsibility to address the issues.

Enforcement of existing standards and codes

9. More can and should be done by social media entities and online content hosts to ensure content on their platforms including political advertising does not contain inaccurate or false information through better use and enforcement of their own election integrity standards.¹⁴ There also remains a role for the likes of the Advertising Standards Authority, the Broadcasting Standards Authority and the Media Council in enforcing their own codes of practice and complaints systems.

Netsafe

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